

INDIANA BOARD OF TAX REVIEW
Final Determination
Findings and Conclusions

Petition: 45-001-02-1-5-00664
Petitioners: Joseph F. & Bernice J. Belovich
Respondent: Department of Local Government Finance
Parcel: 001-25-47-0018-0005
Assessment Year: 2002

The Indiana Board of Tax Review (the “Board”) issues this determination in the above matter, and finds and concludes as follows:

Procedural History

1. The informal hearing as described in Ind. Code § 6-1.1-4-33 was held on March 3, 2004. The Department of Local Government Finance (the DLGF) determined the tax assessment for the subject property is \$17,500 and notified Petitioners on March 31, 2004.
2. Petitioners filed a Form 139L on April 29, 2004.
3. The Board issued a notice of the hearing to the parties dated May 20, 2005.
4. Special Master Kathy J. Clark held the hearing in Crown Point on June 22, 2005.
5. Persons present and sworn in at the hearing:
Joseph F. and Bernice J. Belovich, Owners,
Joseph Lukomski, Jr, Assessor/Auditor.

Facts

6. The subject property is a single-family dwelling located at 2416 Jackson Street in Gary.
7. The Special Master did not conduct an on-site inspection of the property.
8. The assessed value as determined by the DLGF is:
Land \$4,500 Improvements \$13,000 Total \$17,500.
9. The assessed value requested by the Petitioners is:
Land \$3,200 Improvements \$6,800 Total \$10,000.

Issues

10. Summary of Petitioners' contentions in support of an alleged error in the assessment:
- a) The 2002 assessment of \$17,500 is much too high for the subject property because extensive interior and exterior repairs are required to make the dwelling livable and saleable. The condition is well below average condition for which it is currently assessed. *J. Belovich testimony.*
 - b) Exhibits 1 through 5 verify that Petitioners spent over \$2,000 on repairs to the walls, roof, ceiling, floors, electric, and plumbing during April, May, and June 2005. The costs for these projects are not fully billed and are expected to be twice this amount. *J. Belovich testimony; B. Belovich testimony.*
 - c) Petitioners' contractor, Mr. Dino French, believes the work will be much higher than originally estimated. *J. Belovich testimony.*
 - d) A dwelling located right across the street from the subject is boarded up. *Id.*
 - e) Petitioners unsuccessfully tried to sell the subject property for \$10,000. *Id.*
 - f) The homes in the subject neighborhood that have sold must be in good condition inside because it can be assumed that they were purchased by someone who intends to live in them. *Respondent Exhibit 4, J. Belovich testimony.*
11. Summary of Respondent's contentions in support of the assessment:
- a) The average condition rating assigned to the subject dwelling reflects that, while some repairs may be needed, the dwelling's condition is similar to the majority of other homes within the neighborhood. *Lukomski testimony.*
 - b) The subject's assessed value equals \$25.74 per square foot. Dwellings in the subject's neighborhood that are comparable in age, size, style, and grade have sold for between \$21.12 per square foot and \$59.00 per square foot. Their conditions range from good to fair. The \$17,500 assessed value fairly represents the subject as to market/value-in-use. *Respondent Exhibits 2, 4; Lukomski testimony.*

Record

12. The official record for this matter is made up of the following:
- a) The Petition,
 - b) The tape recording of the hearing labeled Lake County 1567,

- c) Exhibits:
 - Petitioner Exhibit 1 - Invoice French Electric Plumbing,
 - Petitioner Exhibit 2 - Bill for labor paid to French Electric Plumbing,
 - Petitioner Exhibit 3 - Plaster work bill for \$175,
 - Petitioner Exhibit 4 - Labor bill for various projects,
 - Petitioner Exhibit 5 - Menard's receipt for supplies,
 - Respondent Exhibit 1 - Form 139L,
 - Respondent Exhibit 2 - Subject property record card,
 - Respondent Exhibit 3 - Subject photograph,
 - Respondent Exhibit 4 - Comparable property record cards and photographs,
 - Board Exhibit A - Form 139L,
 - Board Exhibit B - Hearing Notice,
 - Board Exhibit C - Hearing Sign-In Sheet,
- d) These Findings and Conclusions.

Analysis

- 13. The most applicable governing cases are:
 - a) A Petitioner seeking review of a determination of an assessing official has the burden to establish a prima facie case proving that the current assessment is incorrect and specifically what the correct assessment would be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d at 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998).
 - b) In making its case, the taxpayer must explain how each piece of evidence is relevant to the requested assessment. *See Indianapolis Racquet Club, Inc. v. Washington Twp. Assessor*, 802 N.E.2d 1018, 1022 (Ind. Tax Ct. 2004) ("[I]t is the taxpayer's duty to walk the Indiana Board . . . through every element of the analysis").
 - c) Once the Petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the Petitioner's evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004).
- 14. Petitioners failed to make a prima facie case. This conclusion was arrived at because:
 - a) Petitioners contend the condition of the property is well below average, but it is assessed incorrectly as being in average condition.
 - b) Condition is a rating assigned each structure that reflects its effective age in the market. It is determined by inspection of the structure and by relating the structure to comparable structures within the subject's neighborhood. REAL PROPERTY ASSESSMENT GUIDELINES FOR 2002 – VERSION A, app. B at 5 (incorporated by reference at 50 IAC 2.3-1-2).

- c) "Average Condition Rating – The structure has been maintained like and is in the typical physical condition of a majority of structures in the neighborhood. It offers the same utility as the majority of structures in the neighborhood. It has the same location influences as the majority of structures in the neighborhood." *Id. at 7.*
- d) "Fair Condition Rating – The structure suffers from minor deferred maintenance and demonstrates less physical maintenance than the majority of structures within the neighborhood. It suffers from minor inutilities in that it lacks an amenity that the majority of structures in the neighborhood offer. It is in a less desirable location with in the neighborhood than the majority of structures." *Id.*
- e) "Neighborhood – A geographical area exhibiting a high degree of homogeneity in residential amenities, land use, economic and social trends, and housing characteristics." GUIDELINES, glossary at 14.
- f) Indiana's assessment regulations state that a property's assessment is to reflect the value as of January 1, 1999. 2002 REAL PROPERTY ASSESSMENT MANUAL at 12 (incorporated by reference at 50 IAC 2.3-1-2). If evidence is submitted that establishes a value for a date other than the statutory valuation date, an explanation as to how it demonstrates, or is relevant to, the subject value as of January 1, 1999, is required if that evidence is to have probative value. *Long v. Wayne Twp Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005).
- g) Petitioners failed to address the subject's condition as compared to other properties in the neighborhood.
- h) Repairs to the dwelling began in April 2005, and are continuing as of the date of the hearing. Petitioners' contractor/superintendent, Mr. Dino French, told them that the repair work would cost more than originally estimated and would take longer to complete. Petitioners failed to prove that repairs they started in 2005 were needed as of March 1, 2002. Therefore, Petitioners failed to establish that their evidence is relevant to the 2002 assessment.
- i) Furthermore, it is Petitioners' burden to walk through every element of the analysis regarding how the repairs prove the condition of the property. Petitioners claim the condition is less than average, but they failed to specify what they claim the condition should be or explain how their evidence establishes a lesser condition. *See Indianapolis Racquet Club*, 802 N.E.2d 1018, 1022.
- j) Petitioners failed to establish any relationship between the existence of a boarded up dwelling located near the subject property and the current assessment. Again, in making its case, the taxpayer must explain how each piece of evidence is relevant to the requested assessment. *Id.*
- k) Petitioners failed to establish when they offered the subject for sale or how they marketed the property. Consequently, the testimony that Petitioners unsuccessfully

tried to sell the property for \$10,000 lacks the facts or explanation that might give such evidence probative value. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1119 (Ind. Tax Ct. 1998). This evidence also lacks probative value because Petitioners failed to relate the proposed price to a value as of January 1, 1999. *See Long*, 821 N.E.2d at 471.

- l) Petitioners statement that “homes sold in the neighborhood must be in good condition” because “it can be assumed that they were purchased by someone who intends to live in them” is conclusory in nature and of no value to the Board in making a determination. *Whitley Products*, 704 N.E.2d at 1119.
- m) Where Petitioner has not supported the claim with probative evidence, Respondent’s duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep’t of Gov’t Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003); *Whitley Products*, 704 N.E.2d at 1119.

Conclusion

- 15. Petitioners failed to provide sufficient evidence to establish a prima facie. The Board finds for Respondent.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should not be changed.

ISSUED: _____

Commissioner,
Indiana Board of Tax Review

IMPORTANT NOTICE

- APPEAL RIGHTS -

You may petition for judicial review of this final determination pursuant to the provisions of Indiana Code § 6-1.1-15-5. The action shall be taken to the Indiana Tax Court under Indiana Code § 4-21.5-5. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. You must name in the petition and in the petition's caption the persons who were parties to any proceeding that led to the agency action under Indiana Tax Court Rule 4(B)(2), Indiana Trial Rule 10(A), and Indiana Code § 4-21.5-5-7(b)(4), § 6-1.1-15-5(b). The Tax Court Rules provide a sample petition for judicial review. The Indiana Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>, The Indiana Trial Rules are available on the Internet at http://www.in.gov/judiciary/rules/trial_proc/index.html. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.